IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 26 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.I.T. - Applicant(s)
Versus
P. NAVINKUMAR AND CO. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. At the instance of Revenue the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has referred following question of law for the opinion of this court under Section 256 of the Income Tax Act, 1961 (“the Act” for short).

> “Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in law in holding that 8% premium on the licences purchased by it from outside parties for sale or import would be liable to be treated as cash assistance u/s.28(iib) against its export eligible to deduction u/s. 80HHC and not income from other sources.”

2. This Court has heard Mr.M.R.Bhatt, learned counsel for the Revenue, at length and in great detail. The endorsement on the Board indicates that though the respondent-assessee Company is duly served, it has neither appeared through its lawyer nor through its constituted agent.

3. Section 80HHC deals with deduction in respect of profits retained for export business. Hence necessary formula is set out therein. It may be mentioned that

the question of law referred to this Court for opinion relates to assessment year 1994-95 and as observed earlier, the Appellate Tribunal has taken the view that 8% premium on the licences purchased by the assessee from the outside parties for sale or import would be liable to be treated as cash assistance under Section 28(iib) against its export eligible to deduction under Section 80HHC and not income from other sources. However, this Court finds that Fifth proviso was inserted by the Taxation Law (Amendment) Act, 2005 with retrospective effect from April 1, 1992, which reads as under:-

> "Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of-
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> (a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or
> (b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."

4. The judgment delivered by I.T.A.T. does not indicate that the Fifth proviso inserted by Taxation Law (Amendment) Act, 2005 with retrospective effect from April 1, 1992 was noticed by it. Under the circumstances, this court is of the opinion that the matter deserves to be remitted to the I.T.A.T. for its fresh consideration of the question referred to this Court for opinion in the light of the Fifth proviso referred to above as also the amendment made under the Firth Act 2005. The matter is accordingly remitted to the I.T.A.T. for fresh consideration.

5. The Reference stands disposed of with no orders as to costs.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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